

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN CHEN, et al.,

Plaintiffs,

v.

NATALIE D'AMICO, et al.,

Defendants.

CASE NO. C16-1877JLR

ORDER


Before the court is Plaintiff J.L.'s motion for partial summary judgment. (MSJ (Dkt. # 349); Reply (Dkt. # 358).) J.L. moves to dismiss Defendants Kimberly Danner, Jill Kegel, and the Washington State Department of Children, Youth, and Families's (collectively, the "State Defendants") affirmative defense L, in which the State Defendants allege they have immunity against J.L. and Plaintiff Susan Chen's (together, "Plaintiffs") negligent investigation claim. (MSJ at 1; *see* Ans. to 4th Am. Compl. (Dkt. # 185) at 21 ("The State Defendants have no liability under RCW 26.44 for negligent

1 investigation as their conduct was not intentional, malicious, reckless, or grossly
2 negligent per RCW 4.24.595.”.)

3 In response, the State Defendants represent that they “have no intention of
4 pursuing affirmative defense L at trial and do not oppose the Court’s striking of that
5 defense[.]” (Resp. (Dkt. # 357) at 2.) They point out that RCW 4.24.595(1), the statute
6 on which they based their affirmative defense, does not apply to Plaintiffs’ remaining
7 negligent investigation claim because that claim is based only on conduct that occurred
8 after the shelter care hearing at issue in this case. (*Id.* (citing 9th Cir. Memo. (Dkt. # 297)
9 at 4).) In reply, J.L. represents that the State Defendants never indicated that they would
10 waive affirmative defense L until they filed their response. (Reply at 1-2.) He urges the
11 court to grant his motion in light of the State Defendants’ nonopposition. (*Id.* at 2.)

12 Because the State Defendants do not oppose Plaintiffs’ request to dismiss
13 affirmative defense L, the court GRANTS J.L.’s motion for partial summary judgment
14 (Dkt. # 349). Affirmative defense L is STRICKEN from the State Defendants’ answer to
15 Plaintiffs’ fourth amended complaint.

16 Dated this 15th day of November, 2024.

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19 JAMES L. ROBART
20 United States District Judge
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